

EXHIBIT 24

In The Matter Of:

*Fair Fight Action v.
Raffensperger*

*Kenneth Mayer, Ph.D.
February 26, 2020*

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1 analysis.do. Did -- other -- is that file -- do you
2 have any analysis in that file other than simply
3 combining spreadsheets?

4 A. That code does something different. That code takes
5 the -- the result of the appending -- of the append
6 file, so I now have a statewide voter file, and then
7 that -- that file or that code processes the file
8 to -- to produce the data that I then analyze to
9 generate the data for the tables in the report.

10 Q. Okay. And the tables in the report, those are the
11 tables that are in the pending analysis January 2020
12 Excel file here?

13 A. That Excel file was what I used to actually format
14 the tables, so that -- that Excel file takes the
15 output of the -- of the STATA file and it just is a
16 matter of convenience because Excel has some
17 formatting features that allows you to generate
18 tables that are -- that are more readable and that
19 STATA doesn't do very well.

20 Q. Okay. Now, Section 4 of your report on page 5
21 estimating -- titled Estimating the Quantity of
22 Interest, you state that the key empirical quantity
23 of interest is the number of otherwise eligible
24 people incorrectly placed in MIDR status because
25 their registration information did not exactly match

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1 with information in state driver's license files
2 maintained by DDS or national social security files,
3 the verification process, or because they were
4 flagged as non-citizens.

5 Do you still maintain that that is the key
6 empirical quantity of interest?

7 A. That's the basic one that you would then use to
8 generate some of the other estimates looking at the
9 demographics of registrants in that status.

10 Q. Now, your -- your report does not -- actually --
11 Well, you do not actually determine the key
12 empirical quantity of interest, correct?

13 A. Well, as I -- as I note that that is unobservable.

14 Q. And -- and why is that?

15 A. Because as I note in the report, what I see or what
16 we observe is the -- the number of people who are in
17 that status. What is not observable is whether
18 someone is in that status and shouldn't be because
19 they actually were in the DDS files or they are
20 citizens, but because of errors or the nature of the
21 match process, they are kicked out as -- as failing
22 verification or non-citizens when they actually
23 shouldn't have.

24 Q. So there's -- You're not opining on any number of
25 individuals that were incorrectly placed into MIDR

1 or pending status?

2 A. Well, I am absolutely certain that the number is
3 greater than zero, but I -- it is not possible to
4 point to a specific number and say this is the exact
5 quantity, this is the exact number of people who
6 were incorrectly placed in this status.

7 Q. So your report lists a number of different statuses
8 but doesn't show that anyone was wrongfully placed
9 in those statuses, although you believe there's at
10 least one person?

11 A. Well, it's not a matter of belief, it's a matter of
12 certainty. But there is nothing in the data that
13 specifically indicates that this person was
14 incorrectly placed in -- in status. You would have
15 to infer that from the nature of the process and
16 looking at people who were originally -- or at some
17 point were in pending status but then were
18 ultimately moved to the active file. And I have
19 data on that, and that's -- that's -- that's a
20 quantity that you can use to draw a more general
21 inference.

22 Q. And that's the same for -- for non -- for the
23 non-citizens, right? You state that you can't
24 observe the number of pending registrants who are
25 incorrectly flagged as non-citizens, though you are

1 certain that the number is -- is non-zero?

2 A. That's correct.

3 Q. Now, what's -- what is the -- what is the value
4 of -- of this inference for purposes of your -- your
5 report if we don't know that anybody was actually
6 incorrectly flagged?

7 A. Well, that's -- that's the foundation of inference
8 is that you examine the data that you can observe,
9 and you use that to reach an informed view of what
10 you cannot directly observe. And that's used
11 universally in social science. Any time somebody
12 makes a forecast, that's an inference. Any time
13 someone is making a population estimate by using a
14 sample, any survey is a kind of inference, and so
15 it's not this sort of obscure mystic process where I
16 am trying to define what I can't observe. It's the
17 basic element of social science reasoning that you
18 are interested in something that you cannot directly
19 observe and so you examine the data that you -- that
20 you can observe and draw inferences based on that of
21 what the underlying characteristics or the
22 underlying values are.

23 Q. And so your inference is based on the voter
24 registration file, the pending registrant file, and
25 the county registration files that you combined?

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1 Q. But if that number -- if the number of registrants
2 after HB 316 was -- number of African-American
3 registrants after 316 constitutes 40 percent of the
4 total active registrants in that period, then
5 there -- the number of individuals in pending status
6 is not disproportionate to the reg -- to the
7 registration numbers?

8 A. I think that would be right.

9 Q. Okay. And that would be the same across any group,
10 right? If -- if your percentage of individuals in
11 pending status -- so let's take whites. White
12 non -- not of Hispanic origin. 14.68 percent of the
13 individuals in pending status are -- are white,
14 correct?

15 A. That's correct.

16 Q. And if the number of individuals, the percentage of
17 registrants from 316, enactment of 316, to whenever
18 these numbers were pulled, was greater than 14.68,
19 there would be a disproportionate number of
20 registrants being flagged or being placed in pending
21 status who are white?

22 A. So if we looked at a specific period?

23 Q. Same exact thing that we just went over.

24 A. I think that's correct.

25 Q. Okay. Is there a reason why you didn't look at the

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1 numbers from post 316?

2 A. No. I was interested in the -- the total numbers of
3 people in the -- in the status.

4 Q. And you'll agree though then that your conclusion,
5 if we do look at the -- the number of registrants
6 from that period, your conclusion that no matter how
7 the data are aggregated, the verification process
8 disproportionately affects minority registrants,
9 that would be incorrect?

10 A. I don't think that would be incorrect.

11 Q. Why?

12 A. I think the marginals might change, but just
13 eyeballing it, there's no reason to think that the
14 overall conclusion of minority voters being
15 disproportionately affected would change.

16 Q. Well, if -- and that's disproportionate, which in
17 your conclusion you're referring to disproportionate
18 to white voters, right?

19 A. Disproportionate to their makeup in the voting
20 population.

21 Q. And if -- again, if the number of voters who
22 registered after 316, that -- the number of let's
23 say white voters is greater than 14.68, then -- then
24 you'd conclude that the white voters are being put
25 in pending status at a disproportionate rate, right?

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1 percentage of white registrants in pending status,
2 or any minority. Pick any group. I think it
3 applies across the board, the analysis. So if it
4 did, though, would you -- would you agree that your
5 opinion is -- is incorrect?

6 A. Well, if the results were -- showed that --

7 Q. Well, if the numbers were -- percentages were
8 equal -- let's just take every group except for the
9 white group, white non-Hispanics. I think that was
10 the only one that in your analysis went the other
11 direction. If -- if the number or percentage of
12 active registrants for this period, say for Asian --
13 Asian or Pacific Islanders is greater than 16.83
14 percent, then that would not -- the number of Asian
15 Pacific Islanders in pending status as of January
16 2020 would not be disproportionate?

17 A. If that's what the data showed, but I don't think
18 that's what the data would show.

19 Q. But if it did, you would agree?

20 A. Well, my conclusions are based on the data.

21 Q. Well, you didn't look at this data, right?

22 A. I didn't look at that particular data.

23 Q. Now, you did look at -- at individuals in non --
24 that are -- or registrants that are in pending
25 status due to non-citizenship, right? And table 5

1 of your report, page 22, and table 6, now these two
2 reports you're looking -- excuse me, tables --
3 you're -- you're looking at percentages of
4 individuals who are in pending status as
5 non-citizen, and you're taking their -- by race, and
6 then in table 6 you are looking at just the
7 percentage of individuals who are voting age
8 naturalized citizens living in Georgia according to
9 the 2014-2018 five-year American Community survey,
10 right?

11 And if I'm -- if I'm following this correctly,
12 the -- let's take Hispanics in table 6. 20.9
13 percent of the voting age naturalized citizens
14 living in Georgia are Hispanic, and you say that in
15 table 5 there's 20.9 percent in pending status as
16 flagged, so you wouldn't say there's a
17 disproportionate effect there?

18 A. Well, I'm not arguing for -- Again we're comparing
19 two different numbers. The point of table 6 is to
20 demonstrate that there are, in fact, hundreds of
21 thousands of naturalized foreign-born citizens
22 living in Georgia.

23 Q. Uh-huh.

24 A. And combined with the known inaccuracies of relying
25 on driver's license data to verify citizenship

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1 because it's rarely updated or frequently not
2 updated, this shows that among the people who are
3 registered who are flagged as non-citizens, I mean I
4 am certain that there are actual citizens on that --
5 in -- on that list of people. I don't know how
6 many, but I can express certainty that the number is
7 greater than zero.

8 So that means that some of these individuals
9 are actually citizens, and because of a flaw in the
10 underlying verification process, they are flagged as
11 non-citizens and will have to go through a separate
12 process.

13 And the point of table 6 is not to say that
14 those numbers of -- you know, the percentage --

15 Q. Okay.

16 A. -- of naturalized foreign-born African-American --

17 Q. Right.

18 A. -- people in Georgia should be the same as that
19 number.

20 Q. I understand that.

21 A. It's just that there are --

22 Q. It's a little different. It's not the same analysis
23 that we were just looking at regarding the total?

24 A. That's correct.

25 Q. Now, you said that there are the flaws in the

1 method of relying on driver's license data.

2 Q. Looking at the -- the conclusions in your report,
3 have any of those conclusions changed?

4 A. No.

5 Q. And your -- your analysis -- You didn't conduct any
6 causal analysis for your report, right?

7 A. Causal in terms of?

8 Q. Well, why an individual may be -- yeah, the cause
9 and effect, why an individual may be in MIDR status.
10 You looked -- Your report is based on inferences
11 solely?

12 A. That's generally true.

13 Q. I mean you state in your -- in your report --

14 A. Right, so I don't have information about any
15 particular individuals.

16 Q. So your report is -- is based on limited
17 information?

18 A. It's -- There was information that I did not have
19 access to.

20 Q. And are the opinions that we've discussed today,
21 yours -- are those opinions in this deposition and
22 in your report your complete opinion in this case?

23 A. I would say yes. I mean this is -- these are the
24 conclusions I reached based on the data that I have
25 had, that I have access to.